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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,273	03/05/2001	Mark W. Publicover	5578-58206/RJP	3749
<div>759005/20/2009 KLARQUIST SPARKMAN CAMPBELL LEIGH &amp; WHINSTON, LLP One World Trade Center, Suite 1600 121 S.W. Salmon Street Portland, OR 97204</div>			<div>EXAMINER DONNELLY, JEROME W</div>	
			<div>ART UNIT 3764</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE 05/20/2009</div>	<div>DELIVERY MODE PAPER</div>

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/800,273

**Applicant(s)**

PUBLICOVER ET AL.

**Examiner**

JEROME W. DONNELLY

**Art Unit**

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) \_\_\_\_ is/are pending in the application. 65, 68 and 71
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) \_\_\_\_ is/are rejected. 65, 68, 71
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
JEROME DONNELLY  
PRIMARY EXAMINER

### Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                      | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

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Response to applicant's remarks and amendments dated 2/12/09.

Claims 65, 68 and 71 are rejected for the same reasons as set forth in the rejections dated 9/12/08.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 65 and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osborne in view of Vail.

Claims 65 and 68 are rejected for the same reasons as set forth in the rejection of the same claims in the office action of 9/12/08.

In regard to applicant's claims of circular, the examiner takes Judicial Notice that beds are known to be made in a circular configuration.

The examiner notes that it would have been obvious to one of ordinary skill in the art to manufacture the bed of Osborne modified by Vail in a circular configuration. Shape is usually not a feature which would patentably distinguish one device from another.

In response to applicants arguments the applicant is reminded that, applicant arguing elements or points which are not being claimed.

The examiner asserts that the prior art discloses poles which are independent from one another. Applicant has not claimed that the poles be flexible or resilient. Applicant has not claimed that nothing is attached to the top of the poles.

In regard to applicants claims of Five to Eight feet the examiner notes that these dimensions are obvious in view of Fig 1 of Vail. Given that numerous people are known to be between 5-8 foot tall and the bed disclosed by Vail is a common bed Vail discloses a height of his bed as falling in a common or obvious range for lengths and heights of a bed. Vail discloses a common bed, not a bed for infants.

In response to applicants claims of a protective covering note covering 48 of Vail and covering 44 of Osborne.

As to applicants claims of a trampoline the examiner reminds the applicant that the term trampoline encompasses the meaning of a common trampoline, but does not exclude other devices which have similar components. The functionality of the device ordinarily would not patentably distinguish one device over another device. Note the similarities between Osborne Fig 2 and a traditional trampoline.

Claim 71 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vail.

Claim 71 is rejected for the same reasons as set forth in the rejection of the same claims, dated 9-12-08.

The examiner further notes that the manufacture the bed of Vail of a circular shape would have been obvious, in view of the fact that beds are known to be round or circular. The examiner takes judicial notice that the beds are known to be round.

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Any inquiry concerning this communication should be directed to Jerome Donnelly at telephone number (571)272-4975.

em/Jerome Donnelly

April 30, 2009

JEROME DONNELLY  
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to be "J. Donnelly", written over the printed name.